IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.
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O R D E R

Sahib Singh & Ors. vs. Tehsildar, Colonization & Ors.

S.B. CIVIL WRIT PETIION NO.2992/1983 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 21st August, 2007

PRESENT
HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.KC Samdariya, for the petitioner.
Mrs. RR Kanwar, Dy. GA.
Mr.Sudheer Sharma]
Mr.Sudesh Gupta], for the respondents.
Mr.Dron Kaushik]

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BY THE COURT:

Heard learned counsel for the parties.

The contention of the petitioners is that petitioners being displaced persons were entitled to allotment of land under the provisions of Displaced Persons (Compensation & Rehabilitation) Act, 1954 (in short the Act of 1954) and they were allotted the agricultural land measuring 250 bigha vide order dated 24th March, 1966 passed by the Settlement-cum-Managing Officer, Sri Ganganagar and a *Sanad* No.5659 dated 24th March, 1966 was issued in favour of the petitioners. In

pursuance of the said *Sanad* the Settlement-cum-Managing Officer, Sri Ganganagar issued a letter dated 24th March, 1966 itself to the Tehsildar, Anupgarh for making necessary entries in the revenue record. Copy of the *Sanad* has not been placed on record by the petitioners. However, petitioners placed on record the letter dated 24th March, 1966 issued by the Settlement-cum-Managing Officer, Sri Ganganagar addressed to Tehsildar, Anupgarh directing him to make entries in the revenue record of the names of the petitioners. According petitioners, they took possession of the above said agricultural land and construct *Dhani* over part of the land. The petitioners, thereafter, again moved an application for making necessary entries in the revenue record, which were not made despite the letter dated 24th March, 1966 issued by the Settlement-cum-Managing Officer, Sri Ganganagar dated 24th March, 1966. The petitioners also preferred writ petition no.1839/1982, which was decided by this Court vide order dated 3rd March, 1983 and according to petitioners, direction was issued to the Tehsildar to take necessary action in the matter. However, it is not the case of the petitioners that direction was issued to the Tehsildar that names of the petitioners be entered in the revenue record. According to petitioners after the decision of the petitioners' writ petition

no.1839/1982, the petitioner again submitted an application before the Tehsildar for making necessary entries in the revenue record on 11th April, 1983. The petitioners also moved an application on 19th April, 1983 before the District Rehabilitation Officer, Sri Ganganagar and submit certified copies of the entries made in the basic register showing the names of the petitioners as allottees. According to petitioners the District Rehabilitation Officer, Sri Ganganagar forwarded the matter to the Tehsildar, Rajasthan Canal Project, Anupgarh with a direction to make entries. The petitioners have placed on record copy of the said communication as Annex.2. During the pendency of these proceedings for making entries in the name of the petitioners in the revenue record, Tehsildar, Colonization, Rajasthan Canal Project issued notices to the petitioners under Section 22 of the Colonization Act for their eviction. Copies of the notices are placed on record as Annexs. 3 and 4. In the said proceedings, the statement of one of the petitioners Sahib Singh was recorded and according to petitioners, he placed on record relevant document showing their entitlement to the land in question. Not only this, the petitioners submitted an application before the respondent no.1 and requested for summing the record of the basic register from the

Rehabilitation Department, but that application was dismissed by the respondent no.1 vide order dated 21st Nov., 1983. In the order dated 21 Nov., 1983, the respondent no.1 held that *Sanad* in question is forged one and, therefore, rejected the petitioners' prayer for making any entries in the names of the petitioners in the revenue record, hence, petitioners preferred this writ petition.

Initially,the writ petition was allowed by the order of this Court dated 12.8.1992. The respondent in suit did not challenge the said order dated 12.8.1992 but some persons who were not party in the writ petition and were allotted land in question preferred DBSAW No.387/1994 before the Division Bench of this Court. The Division Bench of this Court vide order dated 19th Oct., 2004 allowed the D.B.Civil Special Appeal No.387/1994 only on the ground that appellants who were allotted land subsequently were not party in the writ petition and since their allotment of land is prior to filing of the writ petition by the petitioners, therefore, they should have been impleaded as party in the writ petition and the Division Bench, therefore, set aside the judgment of the learned Single Judge allowing the special appeal of the appellants of that appeal and remanded the matter back for re-hearing. Therefore, matter has come again for hearing the

writ petition.

Learned counsel for the petitioners vehemently submitted that the order of the Tehsildar is absolutely illegal and deserves to be quashed only on the ground that the Tehsildar without there being any basis held that *Sand* issued in favour of the petitioners is forged one. The Tehsildar committed grave error of law by relying upon the report received by the Tehsildar wherein it has been stated that entries made in the Rehabilitation register appears to be doubtful in nature. According to learned counsel for the petitioners no opportunity of was given to the petitioners to prove that the entires have wrongly been shown to be doubtful. The petitioners themselves moved application for summoning of the original record then there was no reason for the authorities not to look into the original record to find out whether the comment sent by the person making the entires doubtful itself correct or not. It is also submitted that as per the provisions of the Act of 1954, the Tehsildar or the State authorities had no jurisdiction to question the order passed by any competent authority under the Act of 1954. The State authorities were bound to accept the order passed by the authority under the Act of 1954. Even if State wanted to raise any dispute about the title of the petitioners over the

land in question as displaced persons then that could have been decided only under the provisions of the Act of 1954, but not by the State or State authorities. In view of the above reasons also, any finding recorded by the respondent no.1 in the impugned order dated 21st Dec., 1983 is wholly without jurisdiction.

Learned counsel for the newly added respondents vehemently submitted that the land was not even available for allotment to the displaced persons because it was never recorded in the name of His Excellency the President of India. Further, the land in question was never in possession of the petitioners and the respondents were/are in possession of the land in dispute in pursuance of the order of allotment made in favour of respondents and the respondents were deliberately not impleaded as party respondent in the writ petition. It is also submitted that the State's reply to the writ petition made it clear that no *Sanad* was ever issued in the name of petitioners by any competent authority under the Act of 1954, therefore, the writ petition of the petitioner deserves to be dismissed.

Learned counsel appearing for the respondent – State also supported the contention of the private respondents.

I considered the submissions of learned counsel for the

parties and perused the record also. The petitioners' contention is that land in question was allotted to petitioners as back as on 24th March, 1966. The petitioners have placed on record the copy of the communication dated 24th March, 1966, which appears to have been issued by the Settlement-cum-Managing Officer, Sri Ganganagar and it was addressed to Tehsildar, Anupgarh directing him to make entries in the revenue record of allotment of the land to the petitioners under Section 12 of the Act of 1954. The petitioners placed before the respondent no.1 documentary evidence also in support of their claim. The respondent no.1 obtained the report with respect to entries in the record kept under the provisions of the Act of 1954. In pursuance of that, comment was also received by the Tehsildar that the entires in the register maintained under the Act of 1954 appears to be doubtful. In that situation, it was the duty of the Tehsildar to call for the record itself and the Tehsildar should have recorded its own satisfaction about the genuineness of the entries of the name of the petitioners in the registers and the Tehsildar could not have relied upon the opinion of any other person about the genuineness of the entires made in the relevant registers. That was further more necessary because of the reason that petitioners themselves submitted an

application for summoning of the record to prove that the entries are genuinely made in pursuance of some order passed in their favour. So far as availability of land for allotment to the displaced persons is concerned, that matter also should have been inquired thoroughly in view of the fact that prima facie the petitioners proved this fact that there is entry of their names in the register then Tehsildar should have inquired into the matter whether the land at the relevant time alleged to have been allotted to the petitioners was in fact available for allotment or not. Apart from it, the Tehsildar himself should have examined this aspect of the matter whether all these questions could have been decided by the Tehsildar in the proceedings initiated under Section 22 of the Colonization Act, which is meant for eviction of the trespassers from the colony land only and therein the legality and validity of the orders passed by any competent authority under the Act of 1954 could have been examined or not. The Tehsildar should also have looked into the matter whether the matter could have been decided only by competent authority under the Act of 1954 and not by any revenue authority. It is true that in reply, the State has submitted that no *Sanad* was issued in favour of the petitioners but at the same time, the issue is required to be decided by the competent authority

and not by anybody who may have other powers to decide the other issue other than the issue raised by the petitioners.

In view of the above reasons and particularly, in view of the fact that prima facie there are some documents in favour of the petitioners, genuineness of which has been doubted seriously, therefore, the authority is required to re-consider the matter by looking into the original record itself and not to decide the matter on the basis of opinion sent by any person and authority to the respondent no.1.

Since the newly added respondents submitted that the land has been allotted to them by the competent authority by passing appropriate order therefore, they are also entitled to be heard before passing any order, may it be on the application filed by the petitioners for making entires in the revenue record in their names.

Therefore, in view of th above reasons, the writ petition of the petitioners is allowed, the impugned order dated 24th Nov., 1983 is set aside, the matter is remanded back to the Tehsildar, Colonization, Anupgarh for deciding the matter afresh keeping in mind that if the Tehsildar, Anupgarh is not competent to decide the issue about rights of the petitioners and cannot decide the legality and validity of the order of allotment then he may also refer the matter to the competent

authority under the relevant provisions of law and in case, the Tehsildar finds that Tehsildar can decide the same in accordance with law and under the powers given to him under law then he may pass appropriate order. The opportunity be given to both the parties of producing all evidence which they want to produce before the authority concerned. The Tehsildar, Anupgarh is also directed to summon the original record wherein the *Sanad* was issued to the petitioners and resister in which according to the petitioners entires have been made in the relevant record kept under the provisions of the Act of 1954.

Since the matter is very old one, therefore, the Tehsildar, Anupgarh is directed to decide the matter within a period of six months from the date of receipt of the certified copy of the order, which may be submitted by the petitioners to the concerned authorities alongwith the proper application . Both the parties are directed to appear before the Tehsildar, Anupgarh on 10th Sept., 2007. Till then the status quo will be maintained and, thereafter, appropriate interim order may be passed by the Tehsildar, Anupgarh.

(PRAKASH TATIA), J.

c.p.goyal/-